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RCRA, Superfund & EPCRA Hotline Training Module

Introduction to:

**SARA Subtitle C
(EPCRA §§321-330)**

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SARA SUBTITLE C

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1. INTRODUCTION

The Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act (SARA), requires owners and operators of facilities to report on the hazardous chemicals present at their facilities and the releases of hazardous chemicals from their facilities into the environment. This information is made publicly available to provide communities with the information necessary to develop an emergency plan and to become educated about the potential hazards in their areas. The major portions of EPCRA set out the elements of this program, and these pieces of the statute are covered in other modules. This module covers SARA Subtitle C, which contains provisions that support the reporting requirements and notification procedures contained in Subtitles A and B of EPCRA. These provisions include a trade secrecy mechanism, a comprehensive enforcement policy, and an avenue for public access to the collected information.

When you have completed this module you should understand the trade secrecy claim process, EPCRA enforcement policies and procedures, and other general provisions discussed in SARA Subtitle C. Specifically, you will be able to:

- Identify the procedures for claiming trade secrets
- Outline EPA's procedures for reviewing trade secret claims
- Describe procedures for trade secret disclosure to health professionals
- Explain the enforcement powers created by EPCRA
- Define citizens' rights to file civil actions
- Spell out the public's ability to access information collected under EPCRA.

Use this list of objectives to check your knowledge of this topic after you complete the training session.

2. REGULATORY SUMMARY

SARA Title III, Subtitle C provides the legislative framework for diverse components of the EPCRA program not otherwise addressed in the Act. These sections, EPCRA §§321-330, set out discrete but important components of the EPCRA program that address policy or program implementation issues. To protect business interests, EPCRA §322 provides a trade secrecy mechanism to allow compliance without divulging business-sensitive information. This mechanism has some limits. Subtitle C also gives authority to the community to access information concerning the use and release of hazardous chemicals in their areas (EPCRA §324; 40 CFR §370.30). As with most laws, it is necessary to attach enforcement provisions to the requirements of any regulatory program to compel the regulated community to comply with the law. EPCRA §§325 and 326 lay out the enforcement procedures and penalties associated with noncompliance or inaccurate reporting. The following sections discuss these primary Subtitle C components.

2.1 TRADE SECRETS

In complying with EPCRA, a facility owner/operator may have to reveal information about the materials used to manufacture products at a facility. To protect the business interests of reporting facilities, Subtitle C includes provisions for retaining the confidentiality of sensitive information. At the same time, citizens and health professionals need to access chemical hazard information to protect themselves and to help those exposed to dangerous substances. The trade secrecy claim provisions act as a balance between business interests and citizens' right to know, allowing chemical hazard information to be shared while withholding business-sensitive information from the public. All regulations promulgated concerning trade secrets are found in 40 CFR Part 350.

As discussed in SARA Title III, Subtitles A and B, EPCRA requires an owner or operator of a facility to file notifications and reports if the facility exceeds thresholds for hazardous chemicals during a year. These submissions include extremely hazardous substance notification to a Local Emergency Planning Committee (LEPC) (§§303(d)(2) and (3)), list and MSDS reporting (§311), Hazardous Chemical Inventory Reporting (§312), and Form R reporting (§313). An owner or operator can use the trade secrecy claim process to protect information submitted under these sections. On July 29, 1988, EPA published regulations in the Federal Register outlining procedures for filing trade secret claims (53 FR 28772; 40 CFR Part 350).

These regulations allow only the identity of a specific chemical to be claimed as a trade secret. This means the chemical name and other specific identification, such as the Chemical Abstract Service (CAS) number, do not have to be reported. Instead, a generic class or category is reported. The trade secrecy claim is automatically accepted until challenged by a citizen petition or by EPA. If challenged, EPA will

review and either approve or reject the claim on the basis of four criteria as described in 40 CFR §350.13(a). Once EPA approves a claim for trade secrecy, disclosure of the chemical identity is limited to health professionals for emergency diagnosis, treatment, emergency situations, and preventative measures. In almost all cases, health professionals are required to provide a statement of need and to sign a confidentiality agreement upon receiving trade secret information.

TRADE SECRET TERMS

You should be familiar with the following terms associated with the trade secrecy program.

Confidential Business Information (CBI)

The concepts of trade secrecy, confidentiality, and other related legal concepts involve a business's right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain the business advantages it derives from the information. The definition is meant to encompass any concept that authorizes a federal agency to withhold business information as defined by federal law, as well as any concept which requires EPA to withhold information from the public for the benefit of a business.

Medical Emergency

A medical emergency is any unforeseen condition that a health professional would judge to require urgent and unscheduled medical attention. Such a condition is one that results in sudden or serious symptom(s) constituting a threat to a person's physical or psychological well-being, and that requires immediate medical attention to prevent possible deterioration, disability, or death.

Sanitized

A sanitized version of the trade secret form is a form that omits or withholds information claimed as confidential.

Specific Chemical Identity

The specific chemical identity is the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other precise chemical designation of a substance. When the trade name is reported in lieu of the specific chemical identity, the trade name will be treated as the specific chemical identity.

Substantiation

A claimant provides substantiation to EPA with a trade secrecy claim. It includes written answers to the specific questions set forth in 40 CFR §350.7 to support the claim that the chemical identity is a trade secret.

Trade Secret

A trade secret is any confidential formula, pattern, process, device, information, or compilation of information that is used in a submitter's business, and that gives the submitter an opportunity to obtain an advantage over competitors who do not know or use it. The definition of trade secret for the purposes of EPCRA mirrors that found in tort law, as well as the regulations developed by the Occupational Safety and Health Administration (OSHA) to implement its Hazard Communication Standard (HCS) in the August 24, 1987, Federal Register (52 FR 31876).

TRADE SECRET REPORTING REQUIREMENTS

Facilities encounter the possibility of divulging sensitive or confidential information when filing reports under EPCRA. The trade secret provisions allow facilities to file the required forms without revealing secret information. An owner or operator can claim a trade secret for five different reporting requirements under EPCRA:

- Notification to an LEPC of any changes at a facility that would affect emergency plans under §303(d)(2)
- Answers to questions posed by an LEPC under §303(d)(3)
- Material Safety Data Sheets (MSDSs) or chemical lists submitted under §311
- Tier II emergency and hazardous chemical inventory forms submitted under §312
- The toxics release inventory forms submitted under §313, including data submitted under §6607 of PPA.

The basic reporting requirements for making a trade secrecy claim are similar among the different reporting sections. To claim a trade secret for each of these five sections, an owner or operator must file both a sanitized and unsanitized substantiation. Initial trade secret substantiation forms were published in the Federal Register on July 29, 1988 (53 FR 28772). EPA published revised substantiation forms on March 31, 1997.

Along with substantiations, all five reporting sections require submittal of a sanitized form, list, MSDS, or notification, as appropriate. The requirements for trade secrecy claims differ when filing unsanitized lists and forms. An owner or operator must file an unsanitized list only when claiming a trade secret under §311, and an unsanitized form only when claiming a trade secret under §§312 or 313. For all §§303(c) and (d) and §311 MSDS submittals, a claimant must only file a sanitized notification (40 CFR §350.5). Table 1 outlines the requirements for submitting a trade secrecy claim for all reporting sections.

Table 1
SUMMARY OF REQUIREMENTS FOR SUBMITTING A TRADE SECRET CLAIM

	§§303 (d)(2)&(d)(3)		§311 LIST	§311 MSDS	§312 TIER II	§313 FORM R
SANITIZED	•	•	•	•	•	•
UNSANITIZED			•		•	•
SANITIZED SUBSTANTIATION	•	•	•	•	•	•
UNSANITIZED SUBSTANTIATION	•	•	•	•	•	•

TRADE SECRET CRITERIA

EPCRA does not give facilities blanket authority to withhold any information they consider sensitive or confidential. The purpose of the Act is to provide information to the public; thus the statute limits the types of information that may be withheld, as well as the circumstances in which a claim of trade secrecy can be made. In order to claim a specific chemical identity as a trade secret, the submitter must prove to EPA that the trade secret claim meets the following four criteria set forth in the statute:

- The submitter has not disclosed the information to any other person, other than a member of an LEPC, an officer or employee of the United States or a state or local government, an employee of the submitter, or a person who is bound by a confidentiality agreement and has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures

- The information is not required to be disclosed or otherwise made available to the public under any other federal or state law
- Disclosure of the information is likely to cause substantial harm to the competitive position of the submitter
- The chemical identity is not readily discoverable through reverse engineering.

If a facility claims a trade secret for information that does not constitute a valid claim, EPA may consider the claim to be frivolous and could enforce penalties as specified in §325(d). These penalties are discussed later in this module.

USE OF TRADE NAME PRODUCTS

The use of trade name products and mixtures raises some special issues. If a facility uses a trade name product whose chemical identity is a trade secret, but whose use at the facility is not a trade secret, EPA does not require a trade secrecy claim to be filed by the user because the manufacturer of the product would already have filed the claim. However, if a facility considers the use of a trade name product a trade secret, the facility would have to file a separate claim with EPA despite the claim filed by the manufacturer. The trade name in this case would function as the chemical identity appearing on those parts of the EPCRA submittal sent to EPA that the claimant can supply without knowing the specific chemical identity. If users know the chemical identities of substances they use and wish to file a trade secrecy claim, they must make the claim in terms of the chemical names of the substances. For example, a claimant who uses a trade name product and knows the identity of the specific chemicals contained in that product must use the specific chemical name when filing a trade secrecy claim. The claimant must always report the best information available.

SUBMISSIONS TO STATE AND LOCAL AUTHORITIES

If a facility claims trade secrecy, a copy of the sanitized EPCRA submittal and sanitized substantiation submission must be sent to the appropriate state and local authorities as required under §322(a) of the statute. Facilities that are located on Indian lands should send their submissions to the appropriate Indian tribe (55 FR 30632; July 26, 1990). If a Title III reporting form or substantiation containing any trade secret information is sent to the state, local, or tribal authorities, it is considered public disclosure of the information, making the claim invalid (53 FR 28789; July 29, 1988).

PETITIONS FOR REVIEW OF TRADE SECRECY CLAIMS

To balance the right to protect trade secrets and not disclose chemical identities, EPCRA also creates a public petition process to request disclosure of a chemical

identity claimed as a trade secret (EPCRA §322(d)). This petition process provides for review of the validity of the claim only. If requesters want disclosure of items claimed as confidential in the substantiation, rather than the EPCRA reporting document, the requests must be made pursuant to EPA's Freedom of Information Act regulations under 40 CFR Part 2.

There is a specific format for submitting a petition requesting disclosure outlined in 40 CFR §350.15. The petition must include the petitioner's name, address, telephone number, and the name and address of the company claiming the chemical identity as a trade secret. The petitioner may be an individual, corporation, or other entity. The petition must include the sanitized copy of the Title III submission in which the chemical is claimed as a trade secret. On the form, the petitioner must clearly indicate which chemical identity is requested for disclosure to prevent any confusion about what disclosure the petitioner is requesting.

Once the petition is filed, EPA reviews the claim and must reach a decision about trade secrecy within nine months. The Agency must make a determination of sufficiency, which involves deciding whether the substantiation is true and is sufficient to support the claim of trade secrecy. Depending on the degree of sufficiency, EPA will follow different procedures to determine the validity of the claim.

Upon receiving the petition for disclosure, EPA has 30 days to determine sufficiency. If the claim meets EPA's criteria for sufficiency, the Agency will notify the submitter that he or she has 30 days to submit supplemental information to support the truth of the assertions in the substantiation. If EPA does not receive any information, it will make a determination based on the information previously submitted.

If EPA concludes that a substantiation does not contain answers sufficient to support the four requirements of EPCRA §322(b), then EPA will find that the trade secret claim is insufficient. The submitter may appeal the decision to EPA's Office of General Counsel or amend its original substantiation if the Agency determines "good cause." Good cause exceptions include:

- The submitter was not aware of the facts underlying the additional information at the time the substantiation was submitted, and could not reasonably have known the facts at the time
- EPA regulations and other EPA guidance did not call for such information at the time the substantiation was submitted
- The submitter made a good faith effort to submit a complete substantiation, but failed due to an inadvertent omission or clerical error.

If the claim is determined to be sufficient, EPA must decide whether the claim is entitled to trade secrecy status. If the Agency determines that the facts support trade

secrecy, the submitter will be notified of this decision. If EPA decides the facts do not support the claim of trade secrecy, the submitter will be notified that the Agency intends to release the specific chemical identity.

CONFIDENTIAL BUSINESS INFORMATION (CBI)

The Federal Trade Secrets Act requires the federal government to protect trade secrets and confidential information unless another federal statute requires disclosure (18 U.S.C. §1905). Submitters may claim any information included on the substantiation form as confidential.

To assert a confidentiality claim the submitter must clearly mark the information it considers a trade secret or confidential on the unsanitized version of the substantiation form. The submitter must then delete the trade secret and confidential information on the sanitized version of the substantiation form. The claims of trade secrecy and confidentiality for information submitted on the substantiation are not subject to the petition process, because this process applies only to claims of trade secrecy for the chemical identity. Requests for disclosure of trade secret or confidential material on the substantiation form must be submitted pursuant to Freedom of Information Act regulations (53 FR 28788; July 29, 1988).

RELEASE OF TRADE SECRET INFORMATION TO STATES

States have specific privileges to trade secret and confidential information. Upon request, EPA must provide to the state governor any information obtained, specific chemical identities and substantiations for trade secret claims, and the findings that prove the assertions made in the substantiations are sufficient (EPCRA §322(g)). State governors are prevented from disclosing trade secret information to the public, but may provide the information to SERCs and LEPCs. States are required to take the same precautions as EPA to safeguard trade secret information.

TRADE SECRET DISCLOSURE TO HEALTH PROFESSIONALS

Just as the trade secrecy provisions protect the business interests of industry, the provisions for disclosure to health professionals protect citizens from exposure to unknown hazardous chemicals (EPCRA §323). These provisions allow for the disclosure of trade secret-protected chemical identities to health professionals for diagnosis or treatment in both nonemergency and emergency situations, and for conducting preventive research studies and providing medical treatment by a health professional who is a local government employee. The health professional must sign a statement of need and a confidentiality agreement prior to disclosure. In an emergency situation, however, documentation may be provided after disclosure.

Statement of Need

When a health professional is seeking information that has been granted trade secret status, he or she must justify the request in a statement of need. The following reasons for seeking a chemical's identity are outlined in the statute as acceptable:

- To assess exposure of persons living in a local community to the hazards of the chemical concerned
- To conduct or assess sampling to determine exposure levels of various population groups
- To conduct periodic medical surveillance of exposed population groups
- To provide medical treatment to exposed individuals or population groups
- To conduct studies to determine the health effects of exposure
- To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

Confidentiality Agreement

The confidentiality agreement must state that the health professionals will not use the trade secret chemical identity for any purpose other than the health needs outlined in the statement of need. The written confidentiality agreement should include:

- A description of the procedure to be used to maintain the confidentiality of the disclosed information
- A statement by the health professional that he or she will not use the information for any purpose other than what is in the statement of need
- An agreement with the health professional that information will not be released except as authorized by the terms of the agreement.

The confidentiality agreement may allow the health professional to release the trade secret identity to other health professionals if disclosure is needed for professional opinion. The health professional may also be allowed to write articles for medical journals or to go on speaking tours to discuss the chemical involved if there is no disclosure of the chemical identity or the facility's relationship to the chemical. This confidentiality agreement is subject to state law and state legal contractual requirements.

2.2 ENFORCEMENT AND CIVIL ACTIONS

Although EPCRA focuses on reporting information rather than on regulating behavior, the statute includes provisions to ensure that citizens' rights to access information are upheld. Enforcement provisions provide the incentive for facility owners and operators to comply with EPCRA. Sections 325 and 326 outline civil, administrative, and criminal penalties for inaccurate reporting or failure to report. Section 325 empowers the federal government to assess and collect fines in cases of noncompliance. Section 326 grants citizens, states, and local groups the authority to file civil actions against facility owners and operators, the EPA Administrator, state governors, and State Emergency Response Commissions (SERCs) who fail to comply with EPCRA. The combination of §§325 and 326 equip the federal government, states, local groups, and citizens with the legal tools necessary to access the information that EPCRA grants them the right to obtain.

FEDERAL ENFORCEMENT

Under EPCRA §325, the federal government has the power to assess civil administrative civil judicial penalties against violators. The Agency has substantial latitude in deciding which action or combination of actions to pursue.

An administrative action is a nonjudicial enforcement action that can be taken by EPA or a state. These actions provide for enforcement response without the involvement of the court system. This means EPA takes direct enforcement action against the violator based on authority granted by the statute. Failure to comply with an administrative order or a violation of the regulations can result in the assessment of an administrative or civil penalty, or a criminal charge.

Administrative penalties are a subset of the broader category of civil penalties. Penalties assessed directly by the Administrator are administrative penalties. Penalties assessed by the court at the Agency's impetus are civil penalties.

Unlike administrative actions, judicial actions always involve the court. A judicial action is a formal motion or lawsuit filed in a federal district court by the Department of Justice (DOJ) against a person who has failed to comply with either a statutory or regulatory requirement, or an administrative order. Judicial actions can be civil or criminal and are generally pursued for more serious violations.

The Agency has broad discretion in applying enforcement provisions. In determining the extent of a particular violation, the civil penalty system takes into account the nature, circumstances, extent, and gravity of the violation(s). The system also examines and evaluates the violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings (if any) resulting from the violation(s), and other matters as justice may require. These factors are incorporated into two matrices, one for EPCRA §§304 and 312, and another for EPCRA §311 [See the Interim Final Enforcement Response Policy for Sections 304, 311, & 312 of EPCRA and Section 103 of CERCLA, January 8, 1998]. Section 313 has its

own enforcement policy that also incorporates §6607 of the Pollution Prevention Act (Enforcement Response Policy for Section 313 of EPCRA (1986) and Section 6607 of PPA (1990), August 10, 1992). Section 325 contains five subsections that outline each violation and its consequences.

Civil Monetary Penalty Inflation Adjustments

The Debt Collection Improvement Act of 1996 (DCIA), which amends the Federal Civil Penalties Inflation Adjustment Act of 1990, requires each federal agency to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to an agency's statutes. EPA issued the Civil Monetary Penalty Inflation Adjustment Rule (61 FR 69360; December 31, 1996; and 62 FR 13513; March 20, 1997) to adjust EPA's civil monetary penalties for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation, maintaining the deterrent effect Congress intended when it originally specified penalties. The first mandatory adjustment increases nearly all of EPA's penalty provisions by ten percent. EPCRA civil violations which take place after January 30, 1997, will be subject to the new statutory maximum civil penalty amounts. The DCIA requires that penalties be adjusted for inflation at least once every four years, using a statutory formula set forth in Section 5 of the DCIA. The following sections in this module reflect the adjusted maximum civil penalty amounts under EPCRA set by the adjustment rule.

Civil Penalties for Emergency Planning

Section 325(a) states that the EPA Administrator may order the owner or operator of a facility to comply with the notification requirements in EPCRA §302(c) and §303(d). If an owner or operator fails to respond to the order, the United States District Court has the power to assess a civil penalty not to exceed \$27,500 per violation per day. This type of civil penalty originates from failure to comply with an administrative order, but is assessed by the United States judicial system.

Civil, Administrative, and Criminal Penalties for Emergency Notification

As described in the training module entitled CERCLA and EPCRA Release Reporting Requirements, EPCRA §304 requires any facility that has a release of an extremely hazardous substance or a CERCLA hazardous substance at or above its reportable quantity to notify state and local authorities. Section 325(b) outlines four penalties associated with the failure to comply with EPCRA §304. All four penalties impose a fine on the owner/operator if found out of compliance. The type of penalty assessed depends on the gravity of the violation.

Class I Administrative Penalty

Failure to comply with EPCRA §304 can result in an administrative penalty of not more than \$27,500 per violation. No civil penalties can be levied unless

the accused is notified of the violation and given the opportunity for a hearing.

Class II Administrative Penalty

Failure to comply with EPCRA §304 can result in an administrative penalty of not more than \$27,500 per day for each day during which the violation continues. In the case of a second violation, the penalty can amount to \$82,500 per day for each day the violation continues. In the proceedings for assessing this penalty, the Administrator may issue subpoenas for the attendance of witnesses and the production of relevant material.

Judicial Assessment

The Administrator may bring action in a United States District Court to assess and collect a civil penalty for failure to comply with §304 of not more than \$27,500 per day for each day the violation continues. A second or subsequent violation carries a penalty of not more than \$82,500 per day for each day the violation continues. The fines levied under a judicial assessment and a Class II Administrative penalty are identical; the difference between the two actions lies in the forum in which the penalty is levied.

Criminal Penalties

Any person who knowingly or willfully fails to provide notice under §304, upon conviction, may receive a criminal penalty of not more than \$25,000 or imprisonment for not more than 2 years, or both. A second or subsequent violation can result in a \$50,000 fine and not more than 5 years imprisonment, or both.

Civil and Administrative Penalties for Reporting Requirements

Section 325(c) states that any person who violates EPCRA §§312 or 313 may be held liable and subsequently receive a civil penalty not to exceed \$27,500 per violation. A violation of any reporting requirement under §311, a failure to provide information in a medical emergency under §323(b), or a failure to furnish trade secret information under §§322(a)(2) or 322(d) may result in an \$11,000 civil penalty for each violation. Each day a violation continues is considered a separate violation. The Administrator may assess a civil penalty by administrative order or may bring an action for noncompliance in a United States District Court. The statute does not provide for criminal penalties for violations of these provisions.

Civil, Administrative, and Criminal Penalties with Respect to Trade Secrets

Section 325(d) outlines civil and administrative penalties for frivolous trade secrecy claims as well as criminal penalties for the unauthorized disclosure of trade secret information. If the Administrator determines that there is not sufficient evidence for a valid trade secrecy claim and that the submitted claim is frivolous, the claimant may be subject to a penalty of \$27,500 per claim. The Administrator may

assess this penalty by administrative order or through a United States District Court. If any person knowingly or willfully divulges or discloses information entitled to protection under §322, upon conviction, that person will be assessed a fine of up to \$20,000, imprisonment for up to one year, or both.

Special Enforcement Provisions for §323

Penalties for the failure to submit trade secret information to a health professional under §323 are set out in §325(e). Information on the hazards associated with protected chemicals and mixtures must be provided to a health professional in a medical emergency or with a written statement of need. According to §325(e), a health professional may bring an action in a United States District Court to require a facility owner or operator to provide the necessary information to assist in a medical emergency or other needful circumstance.

CIVIL ACTIONS

In addition to enforcement actions taken by EPA, the statute also provides for parties to seek relief through the courts. Under §326, citizens, states, and local groups have the authority to file civil actions against EPCRA violators. The actions can take the form of citizen suits, which may be filed by any person on his or her own behalf, or state or local suits filed by any state or local government or by any SERC or LEPC. Civil actions can be filed against individual owners or operators of facilities, the EPA Administrator, a state governor, or a SERC. The procedures for filing a civil action depend on the violation, the violator, and the party originating the action. Not all persons can file civil actions for all violations. Section §326 lists the proper filing authorities for each type of violation.

Civil Suits

Any person may pursue a civil action against an owner or operator of a facility, the EPA Administrator, a state governor, or a SERC. There are specific violations for which each party can be held liable. A citizen may bring action against an owner or operator of a facility for failure to:

- Submit a follow-up emergency notice under §304(c)
- Submit an MSDS under §311(a)
- Complete and submit an inventory form under §312(a)
- Complete or submit a toxics release inventory form under §313(a).

A citizen may commence a civil suit against the EPA Administrator for failure to:

- Publish inventory forms under §312(g)
- Respond to a petition to add or delete a chemical under §313(e)(1) within 180 days after receipt of the petition
- Publish a toxics release inventory form under §313(g)

- Establish a computer database under §313(j)
- Promulgate trade secret regulations in accordance with §322(c)
- Render a decision in response to a petition under §322(d) within nine months after receipt of the petition.

A citizen may also file a civil suit against the EPA Administrator, a state governor, or SERC for failure to make information publicly available in accordance with §324(a). Failure to respond to a request for Tier II information under §312(e)(3) may also trigger a civil suit against a state governor or a SERC if the information is not provided within 120 days of the receipt of the request.

State and Local Government Suits

State and local governments have the authority to file suit against owners or operators of facilities for failure to comply with the following sections:

- §302(c) - SERC notification
- §311(a) - Submission of an MSDS or chemical list
- §311(c) - Public availability of inventory reporting information
- §312(a) - Preparation and submission of inventory forms.

A state government may also bring a civil action against the EPA Administrator for failure to provide trade secret information to the state under §322(g). SERCs and LEPCs have the authority to commence a civil action against an owner or operator of a facility for failure to submit Tier II information under §312(e)(1) or under §303(d).

For all violations, no civil action may commence prior to 60 days after the plaintiff has given notice of the alleged violation to the EPA Administrator, the state in which the alleged violation occurred, and the alleged violator (EPCRA §326(d)).

OTHER LIABILITY ISSUES

The procedures and penalties associated with violations of reporting requirements and notification failures are specifically outlined in §326. The statute does not, however, address possible liability for individual SERC and LEPC members. In general, individual members of a SERC or an LEPC cannot be sued or held liable for a poorly handled emergency situation. Persons who serve on government committees generally have no liability for their actions except for instances of gross negligence. This issue varies from state to state. The best source for more information on specific state liability policies is the Attorney General's office in each respective state.

As a Hotline Information Specialist, you are responsible for relaying to a caller the possible enforcement actions that could take place as a result of a violation. You cannot speculate in any way about the penalties associated with a caller's particular

situation. If a caller wishes to learn more about the enforcement procedures that could be taken in a particular situation, the caller should be referred to the enforcement contact in his or her Region. Furthermore, Information Specialists should be aware of court cases involving EPCRA enforcement, but should not discuss the specifics of any case. Any public information about a case, however, may be discussed if provided by EPA.

2.3 PUBLIC AVAILABILITY

The purpose of EPCRA is to provide for the collection, compilation, and dissemination of data critical to emergency planning and community awareness. In accordance with EPCRA's purpose, §324 specifically outlines the public availability of emergency plans, MSDSs, inventory forms, and emergency follow-up notices. First, all plans, data sheets, forms, and notices must be accessible to the general public during normal working hours at specifically designated locations in each state. These locations are named by the EPA Administrator, state governor, SERC, or LEPC depending on the structure of each state program. Second, each LEPC must annually publish a notice of availability in the local newspapers when all the data and reports have been collected. All EPCRA information not otherwise protected by a trade secrecy claim must be made available to the public.

2.4 DEFINITIONS

Subtitle C includes definitions pertaining to all sections of EPCRA. EPCRA §329 contains ten definitions, two of which are referred to frequently. The definitions for "facility" (EPCRA §329(4)) and "person" (EPCRA §329(7)) are often used when explaining EPCRA applicability. Contained in these two definitions is the exemption for federal facilities from compliance with EPCRA. Though technically exempt from the definition of facility under EPCRA, federal facilities are required to comply with EPCRA regulations by Executive Order 12856 (58 FR 41981; August 6, 1993). All the definitions in the statute also appear in the regulations at the beginning of each applicable part (40 CFR Parts 350-372).

3. MODULE SUMMARY

SARA Title III, Subtitle C contains provisions that support the reporting requirements and notification procedures contained in Subtitles A and B of EPCRA. These provisions include trade secrecy, disclosure of protected information to health professionals, federal enforcement, civil actions, public availability of EPCRA information, and a definitions section. The trade secrecy and disclosure to health professionals provisions provide a balance between industry's concerns over disclosing business-sensitive information and the public's desire for information on toxic chemicals. The enforcement and civil action provisions delegate power to EPA, states, and citizens to ensure that the law is upheld. As one of the fundamental purposes of EPCRA, the public availability section requires EPA, SERCs, and LEPCs to provide the information collected under EPCRA to those requesting it. Each of the sections of Subtitle C are necessary for the successful implementation of EPCRA.